

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SYBILLA RANDOLPH, individually and
on behalf of all others similarly situated,

Plaintiff,

V.

CENTENE MANAGEMENT CO.,

Defendant.

CASE NO. C14-5730 BHS

**ORDER GRANTING
PLAINTIFF'S MOTION FOR
CONDITIONAL CLASS
CERTIFICATION AND
RESERVING RULING ON
PLAINTIFF'S PROPOSED
NOTICE**

This matter comes before the Court on Plaintiff Sybilla Randolph’s (“Randolph”) motion for conditional class certification and court-authorized notice (Dkt. 29). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby grants the motion for conditional class certification and reserves ruling on the proposed notice for the reasons stated herein.

I. PROCEDURAL HISTORY

On September 12, 2014, Randolph filed a Fair Labor Standards Act (“FLSA”) collective action against Defendant Centene Management Co. (“Centene”). Dkt. 1 (“Comp.”). Randolph and the putative class members worked for Centene as case managers. *Id.* ¶ 16. Randolph alleges that Centene uniformly misclassified her and other case managers as exempt from the FLSA’s overtime protections. *Id.* ¶¶ 15–20. Thus far, nineteen other individuals have consented to join Randolph’s suit as plaintiffs (“opt-in Plaintiffs”). Dkts. 17–22, 25, 27–28, 30, 47.

1 On March 12, 2015, Randolph moved for conditional class certification and court-
2 authorized notice under the FLSA. Dkt. 29. On March 30, 2015, Centene responded.
3 Dkt. 41. On April 3, 2015, Randolph replied. Dkt. 46.

4 **II. FACTUAL BACKGROUND**

5 Centene is a Wisconsin corporation with its corporate headquarters in St. Louis,
6 Missouri. Comp. ¶ 7; Dkt. 16 (“Ans.”) ¶ 7. Centene operates offices in multiple
7 locations around the country, including Tacoma, Washington. Comp. ¶ 8; Ans. ¶ 8.
8 Centene provides management services to managed care companies operating
9 government-sponsored health insurance plans. Comp. ¶ 10; Ans. ¶ 10.

10 Randolph and the putative class members worked for Centene as case managers.
11 Comp. ¶ 16; Dkt. 29-3, Declaration of Kathy Adams (“Adams Dec.”) ¶ 3; Dkt. 29-3,
12 Declaration of Sharon Bratten (“Bratten Dec.”) ¶ 3; Dkt. 29-3, Declaration of Estella
13 Dobson (“Dobson Dec.”) ¶ 3; Dkt. 29-3, Declaration of Carolyn Gunn (“Gunn Dec.”)
14 ¶ 3; Dkt. 29-1, Declaration of Ruth Lemler (“Lemler Dec.”) ¶ 3; Dkt. 29-3, Declaration
15 of Deborah Letizia (“Letizia Dec.”) ¶ 3; Dkt. 29-3, Declaration of Connie Malaska
16 (“Malaska Dec.”) ¶ 3; Dkt. 29-3, Declaration of Karen Noworyta (“Noworyta Dec.”) ¶ 3;
17 Dkt. 29-3, Declaration of Sybilla Randolph (“Randolph Dec.”) ¶ 3; Dkt. 29-3,
18 Declaration of Belinda Rouse (“Rouse Dec.”) ¶ 3. Randolph and the putative class
19 members operated under similar job descriptions, developed by a centralized human
20 resources department. Dkt. 29-1, Declaration of Rachhana Srey (“Srey Dec.”), Ex. D at
21 3–4; Ex. E.

1 The primary duty of a case manager is to conduct utilization reviews. Adams
2 Dec. ¶ 4; Bratten Dec. ¶ 4; Dobson Dec. ¶ 4; Gunn Dec. ¶ 4; Lemler Dec. ¶ 4; Letizia
3 Dec. ¶ 4; Malaska Dec. ¶ 4; Nowortya Dec. ¶ 4; Randolph Dec. ¶ 4; Rouse Dec. ¶ 4.
4 Utilization reviews consist of reviewing medical authorization requests submitted by
5 healthcare providers against pre-determined guidelines and criteria for insurance
6 coverage and payment purposes. Adams Dec. ¶ 4; Bratten Dec. ¶ 4; Dobson Dec. ¶ 4;
7 Gunn Dec. ¶ 4; Lemler Dec. ¶ 4; Letizia Dec. ¶ 4; Malaska Dec. ¶ 4; Nowortya Dec. ¶ 4;
8 Randolph Dec. ¶ 4. Case managers perform utilization reviews using Centene's standard
9 guidelines, including Centene's medical policy and procedures. Adams Dec. ¶ 8; Bratten
10 Dec. ¶ 8; Dobson Dec. ¶ 8; Gunn Dec. ¶ 8; Lemler Dec. ¶ 8; Letizia Dec. ¶ 8; Malaska
11 Dec. ¶ 8; Nowortya Dec. ¶ 8; Randolph Dec. ¶ 8; Rouse Dec. ¶ 7.

12 Case managers receive similar training at the beginning of their employment with
13 Centene. Adams Dec. ¶ 14; Bratten Dec. ¶ 14; Dobson Dec. ¶ 14; Gunn Dec. ¶ 14;
14 Letizia Dec. ¶ 14; Malaska Dec. ¶ 14; Nowortya Dec. ¶ 14; Randolph Dec. ¶ 14; Rouse
15 Dec. ¶ 14. Case managers are also subject to similar performance measures, such as
16 productivity goals, audits, and tests. Adams Dec. ¶ 15; Bratten Dec. ¶ 15; Dobson Dec.
17 ¶ 15; Gunn Dec. ¶ 15; Lemler Dec. ¶ 14; Letizia Dec. ¶ 15; Malaska Dec. ¶ 15; Nowortya
18 Dec. ¶ 15; Randolph Dec. ¶ 15; Rouse Dec. ¶ 15.

19 Randolph and the putative class members were paid a salary and regularly worked
20 unpaid overtime hours. Adams Dec. ¶¶ 10, 13; Bratten Dec. ¶¶ 10, 12–13; Dobson Dec.
21 ¶¶ 10, 12–13; Gunn Dec. ¶¶ 10, 12–13; Lemler Dec. ¶¶ 10, 12–13; Letizia Dec. ¶¶ 10,
22 12–13; Malaska Dec. ¶¶ 10, 12–13; Nowortya Dec. ¶¶ 10, 12–13; Randolph Dec. ¶¶ 10,

1 12–13; Rouse Dec. ¶¶ 10, 12–13. Centene classified Randolph and the putative class
 2 members as exempt from the FLSA. Adams Dec. ¶ 13; Bratten Dec. ¶ 13; Dobson Dec. ¶
 3 13; Gunn Dec. ¶ 13; Lemler Dec. ¶ 13; Letizia Dec. ¶ 13; Malaska Dec. ¶ 13; Nowortya
 4 Dec. ¶ 13; Randolph Dec. ¶ 13; Rouse Dec. ¶ 13.

5 III. DISCUSSION

6 Randolph moves for conditional class certification and court-authorized notice
 7 under the FLSA. Dkt. 29. Centene opposes the motion, arguing that Randolph has failed
 8 to establish that conditional class certification is appropriate in this case. Dkt. 41.

9 A. Certification Standard

10 Under the FLSA, a plaintiff may bring a collective action on behalf of herself and
 11 other “similarly situated” employees. 29 U.S.C. § 216(b). To certify a collective action,
 12 the plaintiff must show that she and the putative class members are “similarly situated.”
 13 *In re Wells Fargo Home Mortg. Overtime Pay Litig.*, 527 F. Supp. 2d 1053, 1070 (N.D.
 14 Cal. 2007). The FLSA does not define “similarly situated,” and neither the Supreme
 15 Court nor the Ninth Circuit has considered the issue. *Bollinger v. Residential Capital,*
 16 *LLC*, 761 F. Supp. 2d 1114, 1119 (W.D. Wash. 2011). Within the Ninth Circuit, district
 17 courts have adopted a two-step approach to determine whether a class is “similarly
 18 situated.” *See id.; Khadera v. ABM Indus. Inc.*, 701 F. Supp. 2d 1190, 1194 (W.D. Wash.
 19 2010); *In re Wells Fargo*, 527 F. Supp. 2d at 1070–71. At least five circuit courts follow
 20 this approach. *See White v. Baptist Mem'l Health Care Corp.*, 699 F.3d 869, 877 (6th
 21 Cir. 2012); *Myers v. Hertz Corp.*, 624 F.3d 537, 554–55 (2d Cir. 2010); *Sandoz v.*
 22 *Cingular Wireless LLC*, 553 F.3d 913, 915 n.2 (5th Cir. 2008); *Morgan v. Family Dollar*

1 | *Stores, Inc.*, 551 F.3d 1233, 1260 (11th Cir. 2008); *Thiessen v. Gen. Elec. Capital Corp.*,
 2 | 267 F.3d 1095, 1105 (10th Cir. 2001). This Court will also follow the two-step
 3 | approach.¹

4 At the first step, the Court determines whether the class should be conditionally
 5 certified for the purpose of sending notice of the collective action to potential class
 6 members. *Khadera*, 701 F. Supp. 2d at 1194. For conditional certification, the Court
 7 requires little more than “substantial allegations that the putative class members were
 8 together the victims of a single decision, policy, or plan.” *Id.* This standard is “fairly
 9 lenient and the court bases its findings on the pleadings and affidavits submitted.” *Id.*
 10 (internal quotation marks omitted). The Court does not resolve factual disputes or decide
 11 substantive issues going to the merits at this preliminary stage. *Colson v. Avnet, Inc.*, 687
 12 F. Supp. 2d 914, 926 (D. Ariz. 2010). “The court must only be satisfied that a
 13 ‘reasonable basis’ exists for plaintiffs’ claims of class wide injury.” *Bollinger*, 761 F.
 14 Supp. 2d at 1119.

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16

17 ¹ Centene invites the Court to apply Rule 23 standards in analyzing Randolph’s motion
 18 for conditional class certification. Dkt. 41 at 11 nn.2–3. “Rule 23 actions are fundamentally
 19 different from collective actions under the FLSA.” *Genesis Healthcare Corp. v. Symczyk*, 133 S.
 20 Ct. 1523, 1529 (2013); *see also McElmurry v. U.S. Bank Nat'l Ass'n*, 495 F.3d 1136, 1139 (9th
 21 Cir. 2007) (“A ‘collective action’ differs from a class action.”). Accordingly, many courts have
 22 concluded that Rule 23 standards should not be applied in FLSA collective actions. *See, e.g.,*
Thiessen, 267 F.3d at 1105; *Lillehagen v. Alorica, Inc.*, No. 13-0092, 2014 WL 2009031, at *6–7
 (C.D. Cal. May 15, 2014); *Troy v. Kehe Food Distrib. Inc.*, 276 F.R.D. 642, 649 (W.D. Wash.
 Sept. 12, 2006). Because courts generally apply the two-step approach and Centene has not
 provided any controlling authority to the contrary, the Court declines to apply Rule 23 standards
 here.

1 The second step occurs after discovery is complete, usually on the defendant's
2 motion to decertify. *Khadera*, 701 F. Supp. 2d at 1194; *Morden*, 2006 WL 2620320, at
3 *2. At the decertification stage, the Court uses a stricter standard to determine whether
4 the conditionally certified plaintiffs are actually similarly situated. *Troy*, 276 F.R.D. at
5 649. The Court reviews "several factors, including the specific employment conditions
6 and duties of the individual plaintiffs, any defenses asserted by or available to the
7 defendant which appear to be individual to each plaintiff, fairness and procedural
8 considerations, and whether the plaintiffs made any required filings before instituting
9 suit." *Id.* The second step is not before the Court at this time.

10 **B. Conditional Certification**

11 Randolph seeks to conditionally certify a class of case managers who worked as
12 utilization review nurses for Centene. Dkt. 29. In addition to the factual allegations in
13 the complaint, Randolph has submitted declarations from herself and nine opt-in
14 Plaintiffs. *Id.* at 2. Randolph and the nine opt-in Plaintiffs assert that they worked for
15 Centene as case managers during the relevant statutory period. *See, e.g.*, Randolph Dec.
16 ¶ 3. They state that they performed the same primary job duty, which was to conduct
17 utilization reviews. *Id.* ¶ 4. They further state that they were compensated in the same
18 manner and subject to similar performance standards and expectations. *Id.* ¶¶ 10, 14.
19 They also attest that they worked more than forty hours per week and were denied
20 overtime pay. *Id.* ¶¶ 12–13. Finally, they assert that Centene classified them as exempt
21 from overtime pay. *Id.* ¶ 13.

1 Centene opposes Randolph's motion on several grounds. Dkt. 41. First, Centene
 2 contends that the "cookie cutter" declarations submitted by Randolph are insufficient to
 3 establish that Randolph and the putative class members are "similarly situated." *Id.* at 13.
 4 At this lenient first stage, however, "the use of similarly worded or even 'cookie cutter'
 5 declarations is not fatal to a motion to certify an FLSA collective action." *Bollinger*, 761
 6 F. Supp. 2d at 1120; *see also In re Wells Fargo*, 527 F. Supp. 2d at 1060, 1071.

7 Next, Centene argues that Randolph has not identified a "single decision, policy,
 8 or plan" that will determine the outcome of her claims in this action. Dkt. 41 at 19. The
 9 Court disagrees. Randolph plainly alleges that Centene had a common policy of
 10 classifying case managers as exempt employees and denying them overtime
 11 compensation in violation of the FLSA. Comp. ¶¶ 16–20. The declarations submitted by
 12 Randolph further show that Centene classified case managers who performed utilization
 13 review work as exempt from the FLSA. *See, e.g.*, Randolph Dec. ¶ 13.

14 Centene also attempts to highlight the individual differences between Randolph
 15 and putative class members' job duties. Dkt. 41 at 14–19. In deciding whether potential
 16 plaintiffs should receive notice, courts do not consider individual differences between
 17 putative class members. *See, e.g.*, *Wilson v. Maxim Healthcare Servs., Inc.*, No. C14-
 18 789, 2014 WL 7340480, at *8 (W.D. Wash. Dec. 22, 2014); *Khadera*, 701 F. Supp. 2d at
 19 1194–95; *Morden*, 2006 WL 2620320, at *3. Fact-specific differences between putative
 20 class members go to the merits and are properly addressed at the decertification stage.
 21 *Sanchez v. Sephora USA, Inc.*, No. 11-03396, 2012 WL 2945753, at *4 (N.D. Cal. July
 22 18, 2012); *Khadera*, 701 F. Supp. 2d at 1195; *Morden*, 2006 WL 2620320, at *3.

Finally, Centene argues that the Court should deny Randolph's motion because of manageability concerns. Dkt. 14 at 12–13, 24–25. According to Centene, "conditional certification will inexorably lead to an inefficient and wasteful result," because "determining [Randolph's] claims will require an individualized inquiry into the work duties and experiences of hundreds of Case Managers." *Id.* at 12. Fairness and procedural considerations are properly addressed at the decertification stage rather than the notice stage. *See Villarreal v. Caremark LLC*, No. CV-14-00652, 2014 WL 7184014, at *7 (D. Ariz. Dec. 17, 2014); *Troy*, 276 F.R.D. at 649. Accordingly, Centene's argument regarding manageability concerns is premature.

The Court finds that Randolph has met her burden of showing that she and the putative class members are similarly situated. Randolph has submitted evidence that she and the putative class members had similar job titles, primary job duties, compensation policies, and performance standards. Randolph has also shown that Centene classified case managers as exempt from overtime compensation. Randolph's submissions indicate strong similarities among the putative class members and thus a reasonable basis for Randolph's claims of class-wide injury. This showing satisfies the lenient standard for conditional class certification. *See Wilson*, 2014 WL 7340480, at *8; *Bollinger*, 761 F. Supp. 2d at 1119; *Khadera*, 701 F. Supp. 2d at 1194. The Court therefore grants Randolph's motion for conditional class certification.

C. Notice

The FLSA requires the Court to provide potential class members with "accurate and timely notice concerning the pendency of the collective action, so that they can make

1 informed decisions about whether to participate.” *Hoffmann-La Roche, Inc. v. Sperling*,
2 493 U.S. 165, 170 (1989). Here, Randolph asks the Court to approve her proposed notice
3 and consent form. Dkt. 29 at 14; Srey Dec., Ex. A. In response, Centene requests an
4 opportunity to confer with Randolph regarding the proposed notice and to separately
5 submit any objections to the Court. Dkt. 41 at 25. The Court requires the parties to meet
6 and confer to determine whether they can provide a stipulated notice form. Centene shall
7 file any objections to Randolph’s proposed notice by May 15, 2015. Randolph may
8 respond to those objections by May 22, 2015.

IV. ORDER

10 Therefore, it is hereby **ORDERED** that Randolph's motion for conditional class
11 certification (Dkt. 29) is **GRANTED**. Within ten days of this order, Centene shall
12 provide Randolph with a list of all putative class members and their contact information.
13 The Court **RESERVES ruling** on Randolph's proposed notice. The parties shall meet
14 and confer to determine whether they can provide a stipulated notice form. Centene shall
15 file any objections to Randolph's proposed notice by May 15, 2015. Randolph may
16 respond by May 22, 2015. Randolph's motion is renoted to May 22, 2015.

Dated this 4th day of May, 2015.


BENJAMIN H. SETTLE
United States District Judge